

## **REMARKS/ARGUMENTS**

Applicant respectfully requests reconsideration of this application in view of the above amendments and the following remarks.

### **1. Status of the Claims**

Claims 1-24 are pending in this application.

Claims 1, 14, 18 and 20 have been amended to clarify the claimed subject matter, particularly with respect to structural features and elements of the pouring device and its use.

Support for these amendments is found in the original specification at, for example:

Page 6, lines 18-21

Page 7, line 16

No new matter has been added.

### **2. § 112 Rejection**

Applicant respectfully traverses the rejection under § 112 on the basis of an apparent double inclusion. Claim 1 does not positively recite a device comprising a cap, but rather merely states that a cap could be insertable into the upper portion. Claim 14 has been amended to positively recite an attached cap since "cap" was not positively recited in claim 1 and thus "cap" in claim 14 is not a double inclusion. Accordingly, Applicant respectfully traverses the Examiner's requirement of appropriate correction and this rejection should be withdrawn.

### **3. § 102/103 Rejections**

At the outset, it is noted that there are no rejections of claims 14-16 on the basis of the prior art.

#### **a) 102(b) Rejections over Miller**

Claims 1-7, 20, 21, 22 and 24 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,762,612 to Miller ("Miller").

Applicant respectfully submits that Miller fails to disclose all the elements of any of the foregoing claims, for at least the reasons that follow.

Miller fails to disclose or suggest a pouring device as presently claimed, comprising a plurality of apertures forming a pour opening extending across substantially an entire substantially circular cross section of a cylindrical body. Miller also fails to disclose or suggest a pouring device having an air passageway extending in a direction along the internal periphery of a cylindrical body. To the contrary, vent tube 24 is "axially disposed" with respect to pourout fitment 10. Col. 2, Ins. 57-58; Figs. 1, 3. Furthermore, Miller fails to disclose or suggest a pouring device having a cylindrical body extending above and surrounding uniformly disposed apertures and an air passageway. Instead, Miller discloses a vent tube 24 extending above all other elements of pourout fitment 10, including pouring tube 18. Therefore, by at least failing to disclose or suggest any of the foregoing elements, Miller fails to anticipate (or render obvious) any of the rejected claims.

b) 103(a) rejections over Miller in view of Baxter

Claims 8-11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 4,128,189 to Baxter ("Baxter").

Applicant respectfully submits that neither Miller nor Baxter discloses or provides a reason for creating a pouring device according to any of the rejected claims, for at least the following reasons.

Baxter, like Miller, also fails to disclose a pouring device as presently claimed in independent claim 1, having a cylindrical body extending above and surrounding a plurality of uniformly disposed apertures and an air passageway. To the contrary, Baxter shows a cylindrical portion 56 that terminates below a pouring spout 64 having only a single opening. Thus, the combination of Baxter and Miller fails to disclose a pouring device according to any of claims 8-11.

Moreover, neither Baxter nor Miller discloses a pouring device having a visual indicator comprising an indentation according to claim 8. Regarding claim 9, Applicant respectfully asserts that Baxter column 3, lines 50-53 fails to disclose a visual indicator disposed on an outer surface of an upper portion of a cylindrical body for identifying the relative location of an air passageway with respect to the visual indicator, wherein the visual indicator comprises a marking having a color different from the color of said cylindrical body, but rather discloses that the insert 50, cover 70 and cap 74 can be variously colored in order to harmonize with the color style of a container. Insert 50, cover 70 and cap 74 are all members that extend 360° around the axis of the disclosed device, see Figure 3, and therefore variously coloring them would not identify the relative location of an air passageway extending in a direction along the internal periphery of a cylindrical body. Thus, the cited passage does not disclose or provide a reason for a marking according to claim 9.

For at least the foregoing reasons, none of claims 8-11 is obvious over Miller in view of Baxter.

c) 103(a) Rejections over Miller in view of Pham

Claims 12, 13 and 17<sup>1</sup> have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 5,228,603 to Pham et al. ("Pham").

The reasons set forth in a) are applicable here, as Pham fails to supply the deficiencies of Miller. In particular, Pham fails to teach or suggest a pouring device as presently claimed, namely, a pouring device comprised of a cylindrical body with an upper cylindrical portion having a substantially circular interior cross-sectional shape, the cylindrical body extending above and surrounding uniformly dispersed apertures and an air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the interior of the upper

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<sup>1</sup> Applicant understands by Examiner's reference to a flexible strand that Examiner also intended to reject claim 17 and its parent claims 14-16.

portion to close both the apertures and the air passageway to the atmosphere, the apertures defining a pour opening extending substantially across an entire substantially circular cross section of the cylindrical body. Although Pham discloses a filter, Pham fails to disclose or provide a reason for a filter extending across a pour opening as required by claim 12, where all claims require that the pour opening extend across substantially an entire substantially circular cross section. For each of these reasons, Miller in view of Pham fails to render any claim obvious.

Thus, for at least the foregoing reasons, current claims 12-17 are not obvious over Miller in view of Pham, and this rejection should be withdrawn.

d) 103(a) Rejections over Miller in View of Beall

Claims 18, 19 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 2,812,113 to Beall ("Beall").

Applicant respectfully submits that Beall fails to supply the deficiencies of Miller with respect to all claims. In particular, the combination of Miller and Beall fails to disclose or provide a reason for a pouring device as presently claimed, namely, a pouring device comprised of a cylindrical body with an upper cylindrical portion having a substantially circular interior cross-sectional shape, the cylindrical body extending above and surrounding uniformly dispersed apertures and an air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the interior of the upper portion to close both the apertures and the air passageway to the atmosphere, the apertures defining a pour opening extending substantially across an entire substantially circular cross section of the cylindrical body.

Moreover, neither Miller nor Beall provides a reason to modify the device of Miller to include a visual indicator that identifies the position of an air passageway with respect to the visual indicator. Again, it should be noted that vent tube 24 of Miller is "axially disposed," and thus its position is the same no

matter which way the device of Miller is faced for pouring. See Miller, col. 2, Ins. 57-58; Figs. 1, 3.

**CONCLUSION**

In view of the foregoing, no single reference or combination of the cited references teaches, suggests or otherwise renders obvious, whether alone or in combination, the subject matter of claims 1-24. Applicant respectfully submits that all of the rejections have thus been overcome and claims 1-24, as amended, are in condition for allowance. Accordingly, an early indication of allowance is solicited.

Respectfully submitted,

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